Appl. No. 09/491,991
Amdt. Dated August 9, 2004
Reply to Office action of May 19, 2004

REMARKS/ARGUMENTS

Claims 1-51 are pending in the present application.

This Amendment is in response to the Office Action mailed May 19, 2004. In the Office Action, the Examiner rejected claims 1-51 under 35 U.S.C. §103(a). Applicants have amended claims 1, 5-8, 10, 12-16, 18, 22-25, 27, 29-33, 35, 39-40, 44, 46-50, 52-68, and added claims 52-68. Applicants submit that the newly-added claims introduce no new matter. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Rejection Under 35 U.S.C. § 103

1.   In the Office Action, the Examiner rejected claims 1-51 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,090,011 issued to Fukuta et al. ("Fukuta") in view of U.S. Patent No. 6,560,654 issued to Fedyk et al. ("Fedyk"). Applicants respectfully traverse the rejection and contend that the Examiner has not met the burden of establishing a prima facie case of obviousness. As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP §2143, p. 2100-129 (8th Ed., Rev. 2, May 2004).* Applicants respectfully contend that there is no suggestion or motivation to combine their teachings, and thus no *prima facie* case of obviousness has been established.

Fukuta discloses a packet congestion control method and packet switching equipment. When a congestion occurs, a congestion indicator is added to a packet destined for the congested output line and the resultant packet is switched to be sent out to the transmission source of the packet (Fukuta, col. 4, lines 55-62). In other words, the congested indicator is simply returned back to source of the packet. It is not advertised or broadcast to other nodes in the network.

Fedyk discloses an apparatus and method of maintaining timely topology data within a link state routing network. A link state routing network utilizes broadcast advertisements to notify network devices of bandwidth allocation in the link state network (Fedyk, col. 2, lines 42-

43). Fedyk claims but does not disclose "notify of congestion" (Fedyk, col. 13, lines 10; col. 14, line 5). The term "congestion" simply means "bandwidth allocation".

Fukuta and Fedyk, taken alone or in any combination, does not disclose, suggest, or render obvious (1) determining a congestion status associated with a node in one of a single peer group and a hierarchical level, (2) broadcasting the congestion status to at least one other node in the one of the single peer group and the hierarchical level, (3) receiving a congestion status associated with a node in one of a single peer group and a hierarchical level in the network, the congestion status corresponding to a measured node condition at the node and being broadcast by the node to at least one other node, and (4) routing a call to the node based on the received congestion status. There is no motivation to combine Fukuta and Fedyk because neither of them addresses the problem of managing congestion. There is no teaching or suggestion that one of a single peer group and a hierarchical level is present. Fukuta, read as a whole, does not suggest the desirability of broadcasting congestion status to one other node.

Fukuta merely discloses returning a congestion indicator to the transmission source of the packet. Fedyk discloses using broadcast advertisements to notify network devices of bandwidth allocation, not a congestion status. Fedyk does not disclose determining a congestion status. Fedyk merely discloses using a link state advertisement (LSA) to synchronize the source node with other nodes (Fedyk, col. 5, lines 62-67). The LSA is not a congestion status. Furthermore, since Fukuta explicitly discloses returning a congestion indicator to the transmission source, Fukuta does not suggest broadcasting to one other node. Furthermore, neither Fukuta nor Fedyk discloses a node in one of a single peer group and a hierarchical level. Fukuta merely discloses terminals communicating with each other via packet switches (Fukuta, col. 9, lines 11-13). Since these terminals are connected directly at the same level, they cannot correspond to a level in a hierarchical system. Similarly, Fedyk merely discloses a network having a source node, a final destination node, and intervening nodes on the same level (Fedyk, col. 3, lines 48-53; Figure 1), not a hierarchical level. Therefore, a combination of Fukuta and Fedyk, at best, only leads to returning a bandwidth allocation to the transmission source, which teaches away from the claimed invention.

For the similar reason, dependent claims 2-9, 11-17, 19-26, 28-34, 36-43, 45-51, 53-60, and 62-68 which depend on independent claims 1, 10, 18, 27, 25, 44, 52, and 61 respectively are distinguishable from the cited prior art references.

Therefore, Applicants believe that independent claims 1, 10, 18, 27, 35, 44, 52, 61 and their respective dependent claims are distinguishable over the cited prior art references. Accordingly, Applicants respectfully request the rejection 35 U.S.C. §103(a) be withdrawn.

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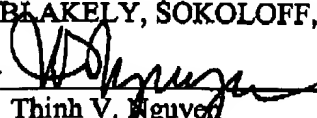Reply to Office action of May 19, 2004

Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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